



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 572

IN THE MATTER OF PHILIP T. CORSON

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Philip T. Corson ("Corson") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 9, 1997, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Corson. The Commission has concluded its inquiry and, on May 12, 1998, found reasonable cause to believe that Corson violated G.L. c. 268A, §23.

The Commission and Corson now agree to the following findings of fact and conclusions of law:

1. From 1989 to 1997, Corson was the City of Lynn Department of Public Works associate commissioner responsible for the operation of the City of Lynn's municipal cemetery, the Pine Grove Cemetery ("the Cemetery"). As such, Corson was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. Corson was responsible for all of the activities at the Cemetery. This included maintaining the buildings and grounds, selling burial plots, providing burial services, and selling and providing perpetual care services.^{1/} During the years Corson was responsible for the operations at the Cemetery, the Cemetery had 400 to 500 burials per year.

Obtaining a Loan from a Subordinate

3. At all times here relevant, Assistant Cemetery Superintendent Harold Hayes ("Hayes") was Corson's direct subordinate. Corson was responsible for approving all personnel decisions affecting Hayes such as assigning overtime work, approving vacations, and supervising Hayes on a daily basis. Hayes, in turn, supervised a working foreman and a number of laborers and clerical employees.

4. Hayes and Corson only knew each other through their work at the Cemetery. They were not friends and did not socialize.

5. In June 1990, Corson borrowed \$2,600 from Hayes. There was no promissory note or any agreed upon interest rate. From 1990 to date, Hayes has made no effort to collect on this loan nor has Corson made any repayments.

6. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his position to secure an unwarranted privilege of substantial value for anyone not properly available to similarly situated individuals.

7. By continuing to interact officially with Hayes through 1996 while owing Hayes \$2,600 (where the effect of such interaction was to implicitly put pressure on Hayes not to seek repayment), Hayes used his official position to secure an unwarranted privilege of substantial value, avoiding repayment, thereby violating §23(b)(2).

8. Section 23(b)(3) prohibits a municipal employee from knowingly or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties.

9. By continuing to supervise Hayes and act on personnel matters relating to Hayes, while owing Hayes \$2,600, Corson acted in a manner which would cause a reasonable person to conclude that Hayes could unduly enjoy Corson's favor in personnel matters. Therefore, Corson violated §23(b)(3).^{2/}

Borrowing Money from Funeral Home Directors

10. Corson regularly dealt with 10 to 12 funeral directors regarding burial service arrangements. The Cemetery's rules for burials had to be followed concerning prior notification to the Cemetery, days and times for services, time of arrival and leaving, parking and so forth. Corson had a certain amount of discretion with respect to enforcing these rules and as to whether any fines would be imposed for rules violations. In addition, Corson generally was the one to respond to any burial service complaints.

11. At the time relevant herein, Richard Parker and his brother owned the Parker Funeral Home in Lynn. The Parker Funeral Home is the fourth or fifth most frequent user of the Cemetery's burial services. As a funeral home director Richard Parker regularly dealt with Corson in arranging burial services.

12. Parker and Corson have known each other for approximately 20 years. They are good friends and golf together once in a while.

13. On or about June 2, 1992, Corson asked Parker for a \$6,000 loan. Parker wrote a personal check in that amount to Corson. They otherwise had no note evidencing the loan, or any understanding when it would be paid back or whether interest would be paid. Parker informally approached Corson on one or two occasions asking when he might expect repayment. Thereafter, Parker took no further steps to collect the money. Corson made his first partial repayment on the loan in early 1997, i.e., after the commencement of the Commission's preliminary inquiry.

14. At the time relevant herein Walter Cuffe owned the Cuffe Funeral Home in Lynn. The Cuffe Funeral Home ranks first in activity at the Cemetery with approximately 175 funeral services per year. As a funeral home director, Cuffe regularly dealt with Corson in arranging burial services.

15. Although Corson had known Cuffe for many years, they had only a business relationship.

16. On June 25, 1992, Corson asked Cuffe for a \$15,000 loan. At the same time, Cuffe provided Corson with a \$15,000 business check. A few months later, Corson executed a note, backdated to June 25, 1992, calling for repayment of this \$15,000 over a 12-month period beginning in February 1993 with an interest rate of 8%. Cuffe did informally seek repayment of the loan, although he did not commence any formal collections proceedings in court. Corson did not make any repayments. Consequently in or about July 1996, Cuffe complained to the mayor regarding the outstanding debt.^{3/}

17. At all times relevant herein, David Solimine, Sr. has owned the Solimine Funeral Home in Lynn. The Solimine Funeral Home is the second most frequent user of the Cemetery's burial services. As a funeral home director, Solimine regularly dealt with Corson in arranging burial services.

18. On August 31, 1996, Corson asked Solimine for a \$1,000 loan. Solimine provided that amount in cash at that time. The loan was not evidenced by any note or other document, nor was there any understanding as to when it would be repaid or whether any interest would be paid. Corson did not make any repayments until after this matter became the subject of news stories in December, 1996.

19. Solimine and Corson have known each other for over 30 years, from a time when they were both involved in the wholesale greenhouse business. They regularly helped each other out during that time. They are business acquaintances, not close friends. They do not socialize.

20. By soliciting a \$15,000 loan from Cuffe, a funeral home director with whom he had regular official dealings, Corson used his official position to secure an unwarranted privilege^{4/} of substantial value, thereby violating §23(b)(2).^{5/}

21. By continuing to interact officially with Cuffe through 1996 while owing Cuffe money (where the effect of such interaction was to implicitly put pressure on Cuffe not to seek repayment), Corson used his official position to secure an unwarranted privilege of substantial value, avoiding repayment, thereby violating §23(b)(2).

22. By soliciting and accepting loans of \$15,000, \$6,000, and \$1,000, respectively, from funeral home directors Cuffe, Parker, and Solimine while having an official relationship with them as an associate commissioner, Corson acted in a manner which would cause a reasonable person to conclude that Cuffe, Parker and Solimine could unduly enjoy Corson's favor in the performance of his official duties, thereby also violating §23(b)(3).

23. By continuing to interact officially with Cuffe, Parker, and Solimine through December 1996 while owing them money, Corson acted in a manner which would cause a reasonable person to conclude that Cuffe, Parker and Solimine could unduly enjoy Corson's favor in the performance of his official duties, thereby violating §23(b)(3).

Misappropriating Cemetery Funds

24. On May 20, 1994, Corson, as an associate DPW commissioner, sold to Len Sanford two 20-year perpetual care plans for \$1,500 each. On that same day Sanford wrote a check for \$3,000 made out to Corson.

25. Corson took this money for his personal use. When confronted by city officials about the incident,^{6/} Corson resigned his DPW position by letter dated June 6, 1997.

26. On July 18, 1997, the city filed suit against Corson for conversion of funds. On August 7, 1997, Corson and the city entered into an agreement for judgment by which Corson agreed to pay the city \$3,112, the amount to be paid at a rate of \$100 a month. As of July 1998, Corson had repaid \$1,741.

27. By converting to his own personal use the \$3,000 which the Sanfords gave him for the Cemetery's 20-year care of certain gravesites, Corson used his official position to secure an unwarranted privilege of substantial value, thereby violating §23(b)(2).

In view of the foregoing violations of G.L. c. 268A by Corson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Corson:

(1) that Corson pay forthwith to the Commission the sum of ten thousand dollars (\$10,000.00) as a civil penalty for violating G.L. c. 268A, §23;

(2) that Corson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 23, 1998

^{1/}Perpetual care services involve long-term care programs for plantings at gravesites.

^{2/}The original borrowing *per se* would also raise issues under §23. See *In re Hilson*, 1992 SEC 603, 604 (UMass director of public safety violates §23(b)(3) by borrowing money from subordinate). Where Corson solicited that loan in 1990, however, it is beyond the Commission's six year statute of limitations. 930 CMR 1.02(10).

^{3/}In December 1996 the city placed Corson on administrative leave because of his failure to repay this loan to Cuffe.

^{4/}The loan was an unwarranted privilege of substantial value because it involved Corson, in effect, taking advantage of an inherently exploitable situation, his regulatory relationship with a funeral direct-or.

^{5/}Corson's soliciting loans from Parker and Solimine also raises §23(b)(2) issues. The weight of the evidence, however, indicates that the motive underlying those loans was friendship and past private business favors, respectively, and not any intent by Corson to use his official position.

6/The Sanford family visited the sites on Memorial weekend 1997 and, observing no plantings, complained to city officials.